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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,519	12/07/2001	William H. Courtney	9297.6823	8594

7590 11/14/2003

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EXAMINER

WRIGHT, ANDREW D

ART UNIT PAPER NUMBER

3617

DATE MAILED: 11/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/021,519

Applicant(s)

COURTNEY, WILLIAM H.

Examiner

Andrew Wright

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-16 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8,12,15 and 22-25 is/are rejected.
- 7) ☒ Claim(s) 7,9-11,13,14,16 and 26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 25 is objected to because of the following informalities: it is unclear if the word "one" in line 1 should be "one" or "once". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Tessier (FR 2,472,506).

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting

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directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1, 3-5, and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Grunstein et al. (US 6,260,199). Grunstein shows a floatation swimsuit that constitutes a personal floatation device (pfd). A collar (6) is a neck restraint that is adjustable in neck size and substantially fills the area below the chin (figures 6 and 7). The restraint (7) constitutes a cephalo-mandibular splint. The restraint (7) is within cover (6). Cover (6) is attached to the pfd. The restraint is closed cell foam. The claim 1 recitation "for aiding a personal floatation device's ability to roll..." has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grunstein et al. (US 6,260,199). Regarding claim 8, Grunstein does not disclose that the cover (6) is attached to the pfd by stitching. Grunstein does, however, disclose stitching in other parts of the assembly. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to use stitching to attach the cover (6) to the pfd.

8. Regarding claim 6, Grunstein does not disclose that the restraint is releasably attached to the pfd. Grunstein does disclose that the buoyant panels of the pfd are releasably secured in pockets such that panels of different thickness can be used for different weight children. Based upon this it would have been obvious to make the restraint releasably secured so that different thickness restraints could be used for different sized children.

9. Claims 1, 3, 5, 12, and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hiebert (US 5,785,670) in view of Khanamirian (US 6,379,208). Hiebert shows a restraint in the form of a cervical collar (i.e. neck brace). The restraint has an adjustable neck size opening. As is well known in the art, the restraint is designed to fill the area beneath the chin and maintain the head of the user in a desired position. Hiebert does not teach that the restraint is adapted for secured positioning within or adjacent the neck opening of a personal flotation device (pfd). Khanamirian discloses a typical pfd with a neck opening. Pfd's are commonplace in activities such as pleasure boating and commuting by ferry. It would have been obvious to one having ordinary skill in the art at the time the invention was made for someone wearing the

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restraint of Hiebert to don a typical pfd when in or around a body of water. The motivation would be to provide oneself with adequate safety gear in the event of falling into the water. The Hiebert restraint would be secured adjacent the neck opening of the pfd by virtue of the snug fit around the user's neck.

10. Regarding claim 3, the Hiebert restraint is a cephalo-mandibular splint.
11. Regarding claim 5, Hiebert discloses the restraint is made of closed cell foam.
12. Regarding claim 12, the restraint has a notch for positioning the chin.
13. Regarding claim 22, the restraint is sculpted to define a notch that allows for unobstructed breathing and swallowing.
14. Regarding claim 23, the restraint maintains the head in the upright and straightforward position, which is at an axis of rotation.
15. Regarding claim 24, the restraint supports the jaw and prevents it from falling forward.
16. Regarding claim 25, the restraint is designed to fit snugly such that it will remain in a fixed position.

***Allowable Subject Matter***

17. Claims 7, 9-11, 13, 14, 16, 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

18. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

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***Conclusion***

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pierce et al. (US 5,839,932) teaches that a cervical collar may be worn at the same time as a floatation device.

21. Any inquiry concerning this communication should be directed to examiner Andrew D. Wright at telephone number (703) 308-6841. The examiner can normally be reached Monday-Friday from 9:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joe Morano, can be reached at (703) 308-0230. The fax number for

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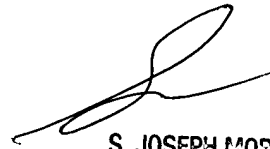
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official communications is 703-872-9306. The fax number directly to the examiner for unofficial communications is 703-746-3548.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist at (703) 308-1113.

Andrew D. Wright  
Patent Examiner  
Art Unit 3617

*AW 11/7/03*

  
S. JOSEPH MORANO  
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